

**DECISION**



17280 Schneider  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-199606

**DATE:** March 9, 1981

**MATTER OF:** John W. Breedlove

**DIGEST:** Claim based upon undesirable discharge from uniformed services, subsequently changed to general under honorable conditions, for damage to earning capacity and emotional suffering is properly characterized as a tort claim cognizable under the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680. It is a matter for consideration by the agency involved, not by this Office.

[Claim For]

Mr. John W. Breedlove, 431-90-4839, appeals the denial of his claim by our Claims Division, Settlement Certificate dated March 19, 1980, for payment of damages allegedly incurred as a result of his discharge from the uniformed services. We agree that his claim must be denied by this Office.

Mr. Breedlove received an undesirable discharge from the United States Army on April 3, 1968. By letter dated April 20, 1979, he was notified by the Office of the Adjutant General, Department of the Army, that after review of the findings of the Army Discharge Review Board, his discharge had been changed to "Under Honorable Conditions (General)." Upon application to the U.S. Army Finance and Accounting Center Mr. Breedlove was found to be entitled to a payment of 87 cents, representing the reduction in pay and allowances due at time of separation which resulted from the reduction in grade from private, E-2, to private, E-1, mandated by Army Regulations.

As we understand it, Mr. Breedlove's claim is not for pay and allowances believed due incident to his discharge from the Army. Rather, his claim is for damages of \$150,000, as compensation for alleged injury to earning capacity and for non-pecuniary harm incident to the undesirable discharge. He contends that he was illegally separated from the Army and seeks relief for the injustice allegedly caused by the stigma attached to an undesirable discharge.

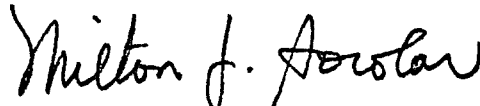
A claim of this type is one sounding in tort. While the Federal Government is made liable for certain classes of torts by reason of the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680

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(1976), an injury to earning capacity and damages consequent to an improperly imposed discharge is not one of the torts for which the Federal Government is made liable.) In any event, [claims against the United States for money damages for injury, loss of personal property, personal injury or death caused by the negligence or wrongful act or omission of any employee of the agency within the scope of his duties may be considered and settled by the head of each Federal agency, in accordance with regulations prescribed by the Attorney General and with his written consent on amounts over \$25,000. The United States District Courts have jurisdiction over these claims. 28 U.S.C. § 1346(b) (1976). This Office has no authority to settle tort claims against other agencies. See B-161131, April 18, 1967.

Accordingly, the action of our Claims Division must be sustained and any further action on this matter by Mr. Breedlove should be directed to the Department of the Army or the courts.



Acting Comptroller General  
of the United States